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8 Attorneys for Plaintiff  
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

No. CR 2:22-cr-00442-GW

13 Plaintiff,

PLEA AGREEMENT FOR DEFENDANT  
VICTOR ANTHONY OLIVERA HERNANDEZ

14 v.

15 VICTOR ANTHONY OLIVERA  
HERNANDEZ,

16 Defendant.

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18  
19 1. This constitutes the plea agreement between VICTOR ANTHONY  
OLIVERA HERNANDEZ ("defendant") and the United States Attorney's  
20 Office for the Central District of California (the "USAO") in the  
21 above-captioned case. This agreement is limited to the USAO and  
22 cannot bind any other federal, state, local, or foreign prosecuting,  
23 enforcement, administrative, or regulatory authorities.  
24

25 DEFENDANT'S OBLIGATIONS

26 2. Defendant agrees to:

27 a. At the earliest opportunity requested by the USAO and  
28 provided by the Court, appear and plead guilty to the single-count

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indictment in United States v. VICTOR ANTHONY OLIVERA HERNANDEZ, CR No. 2:22-cr-00442-GW, which charges defendant with possession with intent to distribute at last 400 grams of a mixture and substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide ("fentanyl"), in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(vi).

b. Not contest facts agreed to in this agreement.

c. Abide by all agreements regarding sentencing contained in this agreement.

10 d. Appear for all court appearances, surrender as ordered  
11 for service of sentence, obey all conditions of any bond, and obey  
12 any other ongoing court order in this matter.

13                   e. Not commit any crime; however, offenses that would be  
14 excluded for sentencing purposes under United States Sentencing  
15 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not  
16 within the scope of this agreement.

17 f. Be truthful at all times with the United States  
18 Probation and Pretrial Services Office and the Court.

19 g. Pay the applicable special assessment at or before the  
20 time of sentencing unless defendant has demonstrated a lack of  
21 ability to pay such assessments.

## THE USAO'S OBLIGATIONS

3. The USAO agrees to:

a. Not contest facts agreed to in this agreement.

25                   b.     Abide by all agreements regarding sentencing contained  
26 in this agreement.

27                   c. At the time of sentencing, provided that defendant  
28 demonstrates an acceptance of responsibility for the offense up to

and including the time of sentencing, recommend a two-level reduction in the applicable Sentencing Guidelines offense level, pursuant to U.S.S.G. § 3E1.1, and recommend and, if necessary, move for an additional one-level reduction if available under that section.

d. Recommend that defendant be sentenced to a term of imprisonment no higher than the low end of the applicable Sentencing Guidelines range, provided that the offense level used by the Court to determine that range is 27 or higher and provided that the Court does not depart downward in offense level or criminal history category. For purposes of this agreement, the low end of the Sentencing Guidelines range is that defined by the Sentencing Table in U.S.S.G. Chapter 5, Part A.

#### NATURE OF THE OFFENSE

4. Defendant understands that for defendant to be guilty of the crime charged in count one, that is, possession with intent to distribute at least 400 grams of a mixture and substance containing a detectable amount of fentanyl, in violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(A)(vi), the following must be true: (1) defendant knowingly possessed fentanyl; and (2) defendant possessed it with the intent to distribute it to another. To possess with intent to distribute means to possess with intent to deliver or transfer possession of fentanyl to another person, with or without any financial interest in the transaction. It does not matter whether the defendant knew that the substance was fentanyl. It is sufficient that the defendant knew that it was some kind of a federally controlled substance.

5. Defendant understands that for defendant to be subject to the statutory maximum and statutory minimum sentences set forth

1 below, the government must prove beyond a reasonable doubt that  
2 defendant possessed at least 400 grams of a mixture or substance  
3 containing a detectable amount of fentanyl. Defendant admits that  
4 defendant, in fact, possessed at least 400 grams, namely  
5 approximately 1,676.12 grams, of a mixture or substance containing a  
6 detectable amount of fentanyl, as described in the single-count  
7 indictment.

8 PENALTIES

9       6. Defendant understands that the statutory maximum sentence  
10 that the Court can impose for a violation of Title 21, United States  
11 Code, Section 841(a)(1), (b)(1)(A)(vi) is: a lifetime term of  
12 imprisonment; a lifetime period of supervised release; a fine of  
13 \$10,000,000 or twice the gross gain or gross loss resulting from the  
14 offense, whichever is greatest; and a mandatory special assessment of  
15 \$100.

16       7. Defendant understands that, absent a determination by the  
17 Court that defendant's case satisfies the criteria set forth in 18  
18 U.S.C. § 3553(f), the statutory mandatory minimum sentence that the  
19 Court must impose for a violation of Title 21, United States Code,  
20 Section 841(a)(1), (b)(1)(A)(vi) is: ten years' imprisonment,  
21 followed by a five-year period of supervised release, and a mandatory  
22 special assessment of \$100.

23       8. Defendant understands that under 21 U.S.C. § 862a,  
24 defendant will not be eligible for assistance under state programs  
25 funded under the Social Security Act or Federal Food Stamp Act or for  
26 federal food stamp program benefits, and that any such benefits or  
27 assistance received by defendant's family members will be reduced to  
28 reflect defendant's ineligibility.

1       9. Defendant understands that supervised release is a period  
2 of time following imprisonment during which defendant will be subject  
3 to various restrictions and requirements. Defendant understands that  
4 if defendant violates one or more of the conditions of any supervised  
5 release imposed, defendant may be returned to prison for all or part  
6 of the term of supervised release authorized by statute for the  
7 offense that resulted in the term of supervised release.

8       10. Defendant understands that, by pleading guilty, defendant  
9 may be giving up valuable government benefits and valuable civic  
10 rights, such as the right to vote, the right to possess a firearm,  
11 the right to hold office, and the right to serve on a jury. Defendant  
12 understands that he is pleading guilty to a felony and that it is a  
13 federal crime for a convicted felon to possess a firearm or  
14 ammunition. Defendant understands that the conviction in this case  
15 may also subject defendant to various other collateral consequences,  
16 including but not limited to revocation of probation, parole, or  
17 supervised release in another case and suspension or revocation of a  
18 professional license. Defendant understands that unanticipated  
19 collateral consequences will not serve as grounds to withdraw  
20 defendant's guilty plea.

21       11. Defendant and his counsel have discussed the fact that, and  
22 defendant understands that, if defendant is not a United States  
23 citizen, the conviction in this case makes it practically inevitable  
24 and a virtual certainty that defendant will be removed or deported  
25 from the United States. Defendant may also be denied United States  
26 citizenship and admission to the United States in the future.  
27 Defendant understands that while there may be arguments that  
28 defendant can raise in immigration proceedings to avoid or delay

removal, removal is presumptively mandatory and a virtual certainty in this case. Defendant further understands that removal and immigration consequences are the subject of a separate proceeding and that no one, including his attorney or the Court, can predict to an absolute certainty the effect of his conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his plea may entail, even if the consequence is automatic removal from the United States.

## FACTUAL BASIS

10        12. Defendant admits that defendant is, in fact, guilty of the  
11 offense to which defendant is agreeing to plead guilty. Defendant  
12 and the USAO agree to the statement of facts provided below and agree  
13 that this statement of facts is sufficient to support a plea of  
14 guilty to the charge described in this agreement and to establish the  
15 Sentencing Guidelines factors set forth in paragraph 14 below but is  
16 not meant to be a complete recitation of all facts relevant to the  
17 underlying criminal conduct or all facts known to either party that  
18 relate to that conduct.

19 On or about August 4, 2022, in Santa Barbara County, within the  
20 Central District of California, defendant knowingly and intentionally  
21 possessed with intent to distribute at least 400 grams, that is,  
22 approximately 1,676.12 grams, of a mixture and substance containing a  
23 detectable amount fentanyl. At the time, defendant knew he possessed  
24 fentanyl and intended to distribute it to another person.

25           Specifically, on August 4, 2022, law enforcement officers  
26   executed warrants to search defendant's residence and car. During  
27   the search, law enforcement officers recovered the following items  
28   from defendant's residence: 1) a grey grocery bag filled with a

1 variety of small plastic bags containing a total of 2,185 "M30"  
2 pills, as well as powder appearing to be crushed pills; and (2) a  
3 grey grocery bag containing 14 smaller clear plastic bags each  
4 containing between approximately 800-1000 "M30" pills. Subsequent  
5 laboratory testing determined that the substance in these bags  
6 contained approximately 1,676.12 grams of fentanyl. Defendant  
7 knowingly possessed this fentanyl with intent to distribute it to  
8 another.

9 During the search, law enforcement officers also recovered other  
10 suspected illegal drugs and a digital scale with drug residue.

11 SENTENCING FACTORS

12 13. Defendant understands that in determining defendant's  
13 sentence the Court is required to calculate the applicable Sentencing  
14 Guidelines range and to consider that range, possible departures  
15 under the Sentencing Guidelines, and the other sentencing factors set  
16 forth in 18 U.S.C. § 3553(a). Defendant understands that the  
17 Sentencing Guidelines are advisory only, that defendant cannot have  
18 any expectation of receiving a sentence within the calculated  
19 Sentencing Guidelines range, and that after considering the  
20 Sentencing Guidelines and the other § 3553(a) factors, the Court will  
21 be free to exercise its discretion to impose any sentence it finds  
22 appropriate between the mandatory minimum and up to the maximum set  
23 by statute for the crime of conviction.

24 14. Defendant and the USAO agree to the following applicable  
25 Sentencing Guidelines factors:

26 Base Offense Level: 32 U.S.S.G. § 2D1.1(c) (4)

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1 Defendant and the USAO reserve the right to argue that additional  
2 specific offense characteristics, adjustments, and departures under  
3 the Sentencing Guidelines are appropriate. Defendant understands  
4 that defendant's offense level could be increased if defendant is a  
5 career offender under U.S.S.G. §§ 4B1.1 and 4B1.2. If defendant's  
6 offense level is so altered, defendant and the USAO will not be bound  
7 by the agreement to Sentencing Guideline factors set forth above.

8       15. Defendant and the USAO agree that:

9           a. Defendant did not use violence or credible threats of  
10 violence or possess a firearm or other dangerous weapon (or induce  
11 another participant to do so) in connection with the offense charged  
12 in the single-count indictment;

13           b. The offense did not result in death or serious bodily  
14 injury to any person; and

15           c. Defendant was not an organizer, leader, manager, or  
16 supervisor of others in the offense and was not engaged in a  
17 continuing criminal enterprise.

18       16. Because the safety valve criteria in U.S.S.G. § 5C1.2(a)(1)  
19 has not been updated to match the language of 18 U.S.C. § 3553(f)(1),  
20 if the Court determines that defendant's case satisfies the criteria  
21 in 18 U.S.C. § 3553(f), but does not satisfy the criteria for a two-  
22 level reduction under U.S.S.G. § 2D1.1(b)(18) (referencing the  
23 criteria set forth in U.S.S.G. § 5C1.2(a)(1)), the government will  
24 recommend a two-level downward variance to defendant's Sentencing  
25 Guidelines range based on the factors set forth in 18 U.S.C. §  
26 3553(a). By making any such recommendation, the government does not  
27 waive any objection to the Court's determination that the criteria in  
28 18 U.S.C. § 3553(f) have been satisfied. If the government makes a

1 two-level variance recommendation as described herein, defendant  
2 agrees not to seek a further reduced sentence pursuant to 18 U.S.C. §  
3 3582(c) (2) in the event the United States Sentencing Commission  
4 amends U.S.S.G. § 5C1.2(a)(1) to match the language of 18 U.S.C. §  
5 3553(f)(1).

6 17. Defendant understands that there is no agreement as to  
7 defendant's criminal history or criminal history category.

8 18. Defendant and the USAO reserve the right to argue for a  
9 sentence outside the sentencing range established by the Sentencing  
10 Guidelines based on the factors set forth in 18 U.S.C. § 3553(a)(1),  
11 (a)(2), (a)(3), (a)(6), and (a)(7).

12 WAIVER OF CONSTITUTIONAL RIGHTS

13 19. Defendant understands that by pleading guilty, defendant  
14 gives up the following rights:

15 a. The right to persist in a plea of not guilty.

16 b. The right to a speedy and public trial by jury.

17 c. The right to be represented by counsel -- and if  
18 necessary have the Court appoint counsel -- at trial. Defendant  
19 understands, however, that, defendant retains the right to be  
20 represented by counsel -- and if necessary have the Court appoint  
21 counsel -- at every other stage of the proceeding.

22 d. The right to be presumed innocent and to have the  
23 burden of proof placed on the government to prove defendant guilty  
24 beyond a reasonable doubt.

25 e. The right to confront and cross-examine witnesses  
26 against defendant.

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f. The right to testify and to present evidence in opposition to the charges, including the right to compel the attendance of witnesses to testify.

g. The right not to be compelled to testify, and, if defendant chose not to testify or present evidence, to have that choice not be used against defendant.

h. Any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

WAIVER OF APPEAL OF CONVICTION

20. Defendant understands that, with the exception of an appeal based on a claim that defendant's guilty plea was involuntary, by pleading guilty defendant is waiving and giving up any right to appeal defendant's conviction on the offense to which defendant is pleading guilty. Defendant understands that this waiver includes, but is not limited to, arguments that the statute to which defendant is pleading guilty is unconstitutional, and any and all claims that the statement of facts provided herein is insufficient to support defendant's plea of guilty.

LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

21. Defendant agrees that, provided the Court imposes a total term of imprisonment within or below the range corresponding to an offense level of 27 and the criminal history category calculated by the Court, defendant gives up the right to appeal all of the following: (a) the procedures and calculations used to determine and impose any portion of the sentence; (b) the term of imprisonment imposed by the Court; (c) the fine imposed by the Court, provided it is within the statutory maximum; (d) to the extent permitted by law,

the constitutionality or legality of defendant's sentence, provided it is within the statutory maximum; (e) the term of probation or supervised release imposed by the Court, provided it is within the statutory maximum; and (f) any of the following conditions of probation or supervised release imposed by the Court: the conditions set forth in Second Amended General Order 20-04 of this Court; the drug testing conditions mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

22. The USAO agrees that, provided (a) all portions of the sentence are at or below the statutory maximum specified above and (b) the Court imposes a term of imprisonment within or above the range corresponding to an offense level of 27 and the criminal history category calculated by the Court, the USAO gives up its right to appeal any portion of the sentence.

RESULT OF WITHDRAWAL OF GUILTY PLEA

23. Defendant agrees that if, after entering a guilty plea pursuant to this agreement, defendant seeks to withdraw and succeeds in withdrawing defendant's guilty plea on any basis other than a claim and finding that entry into this plea agreement was involuntary, then the USAO will be relieved of all of its obligations under this agreement.

EFFECTIVE DATE OF AGREEMENT

24. This agreement is effective upon signature and execution of all required certifications by defendant, defendant's counsel, and an Assistant United States Attorney.

## BREACH OF AGREEMENT

2       25. Defendant agrees that if defendant, at any time after the  
3 signature of this agreement and execution of all required  
4 certifications by defendant, defendant's counsel, and an Assistant  
5 United States Attorney, knowingly violates or fails to perform any of  
6 defendant's obligations under this agreement ("a breach"), the USAO  
7 may declare this agreement breached. All of defendant's obligations  
8 are material, a single breach of this agreement is sufficient for the  
9 USAO to declare a breach, and defendant shall not be deemed to have  
10 cured a breach without the express agreement of the USAO in writing.  
11 If the USAO declares this agreement breached, and the Court finds  
12 such a breach to have occurred, then: (a) if defendant has previously  
13 entered a guilty plea pursuant to this agreement, defendant will not  
14 be able to withdraw the guilty plea, and (b) the USAO will be  
15 relieved of all its obligations under this agreement.

COURT AND UNITED STATES PROBATION AND PRETRIAL SERVICES

OFFICE NOT PARTIES

18       26. Defendant understands that the Court and the United States  
19 Probation and Pretrial Services Office are not parties to this  
20 agreement and need not accept any of the USAO's sentencing  
21 recommendations or the parties' agreements to facts or sentencing  
22 factors.

23       27. Defendant understands that both defendant and the USAO are  
24 free to: (a) supplement the facts by supplying relevant information  
25 to the United States Probation and Pretrial Services Office and the  
26 Court, (b) correct any and all factual misstatements relating to the  
27 Court's Sentencing Guidelines calculations and determination of  
28 sentence, and (c) argue on appeal and collateral review that the

1 Court's Sentencing Guidelines calculations and the sentence it  
2 chooses to impose are not error, although each party agrees to  
3 maintain its view that the calculations in paragraph 14 are  
4 consistent with the facts of this case. While this paragraph permits  
5 both the USAO and defendant to submit full and complete factual  
6 information to the United States Probation and Pretrial Services  
7 Office and the Court, even if that factual information may be viewed  
8 as inconsistent with the facts agreed to in this agreement, this  
9 paragraph does not affect defendant's and the USAO's obligations not  
10 to contest the facts agreed to in this agreement.

11       28. Defendant understands that even if the Court ignores any  
12 sentencing recommendation, finds facts or reaches conclusions  
13 different from those agreed to, and/or imposes any sentence up to the  
14 maximum established by statute, defendant cannot, for that reason,  
15 withdraw defendant's guilty plea, and defendant will remain bound to  
16 fulfill all defendant's obligations under this agreement. Defendant  
17 understands that no one -- not the prosecutor, defendant's attorney,  
18 or the Court -- can make a binding prediction or promise regarding  
19 the sentence defendant will receive, except that it will be within  
20 the statutory maximum.

**NO ADDITIONAL AGREEMENTS**

22        29. Defendant understands that, except as set forth herein,  
23 there are no promises, understandings, or agreements between the USAO  
24 and defendant or defendant's attorney, and that no additional  
25 promise, understanding, or agreement may be entered into unless in a  
26 writing signed by all parties or on the record in court.

27 //  
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1                   PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

2       30. The parties agree that this agreement will be considered  
3 part of the record of defendant's guilty plea hearing as if the  
4 entire agreement had been read into the record of the proceeding.

5 AGREED AND ACCEPTED

6 UNITED STATES ATTORNEY'S OFFICE  
7 FOR THE CENTRAL DISTRICT OF  
CALIFORNIA

8 E. MARTIN ESTRADA  
United States Attorney

9   
10 SARAH S. LEE

11 Assistant United States Attorney

11/22/2022

Date

12   
13 VICTOR ANTHONY OLIVERA HERNANDEZ

Defendant

11/22/22

Date

14   
15 CLAIRE KENNEDY  
16 GABRIELA RIVERA  
17 Deputy Federal Public Defenders  
Attorney for Defendant VICTOR  
ANTHONY OLIVERA HERNANDEZ

11/22/2022

Date

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CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I am satisfied with the representation of my attorney in this matter, and I am pleading guilty because I am guilty of the charge and wish to take advantage of the promises set forth in this agreement, and not for any other reason.

Victor Olivera

VICTOR ANTHONY OLIVERA HERNANDEZ  
Defendant

2222  
11/22/13  
Date

Date

1                   CERTIFICATION OF DEFENDANT'S ATTORNEY

2                   I am VICTOR ANTHONY OLIVERA HERNANDEZ's attorney. I have  
3 carefully and thoroughly discussed every part of this agreement with  
4 my client. Further, I have fully advised my client of his rights, of  
5 possible pretrial motions that might be filed, of possible defenses  
6 that might be asserted either prior to or at trial, of the sentencing  
7 factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing  
8 Guidelines provisions, and of the consequences of entering into this  
9 agreement. To my knowledge: no promises, inducements, or  
10 representations of any kind have been made to my client other than  
11 those contained in this agreement; no one has threatened or forced my  
12 client in any way to enter into this agreement; my client's decision  
13 to enter into this agreement is an informed and voluntary one; and  
14 the factual basis set forth in this agreement is sufficient to  
15 support my client's entry of a guilty plea pursuant to this  
16 agreement.

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11/22/2022

18 \_\_\_\_\_ Date

19 CLAIRE KENNEDY  
GABRIELA RIVERA  
20 Deputy Federal Public Defenders  
Attorney for Defendant VICTOR  
ANTHONY OLIVERA HERNANDEZ

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